

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES CALVIN JEFFRIES,

Defendant-Appellant.

UNPUBLISHED

July 29, 2003

No. 238128

Calhoun Circuit Court

LC No. 01-002868-FH

Before: Zahra, P.J., and Talbot and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right from a sentence of eighteen to thirty-six months' imposed for a conviction of desertion and abandonment, MCL 750.161. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The guidelines as scored placed defendant in the C-III category, for which the minimum sentence range is zero to 17 months'. MCL 777.68. Because the upper limit of the guidelines range was less than eighteen months, the court was required to impose intermediate sanctions of no more than one year in jail "unless the court states on the record a substantial and compelling reason to sentence the individual to the jurisdiction of the department of corrections." MCL 769.34(4)(a). The court may depart from the guidelines for nondiscriminatory reasons where there are legitimate factors not considered by the guidelines or where factors considered by the guidelines have been given inadequate or disproportionate weight. MCL 769.34(3)(a), (b); *People v Armstrong*, 247 Mich App 423, 425; 636 NW2d 785 (2001).

The guidelines gave inadequate weight to the amount of defendant's child support arrearage, which was nearly five times the maximum considered by offense variable sixteen, MCL 777.46(1)(b). In addition, the guidelines did not take into consideration the fact that defendant willfully refused to pay support despite the family court's attempts to compel compliance by partial payment and incarceration. The trial court did not abuse its discretion in

finding a substantial and compelling reason to sentence defendant to prison. *People v Babcock*, 244 Mich App 64, 75; 624 NW2d 479 (2000).

Affirmed.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Donald S. Owens